SUPREME COURT OF THE UNITED STATES

No. 159.

EDWARD H. LEARNED, PLAINTIFF IN ERROR,

vs.

THE CITY OF BURLINGTON.

IN ERROR TO THE CIRCUIT COURT OF THE UNITED STATES FOR THE DISTRICT OF IOWA.

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1 UNITED STATES OF AMERICA:

United States circuit court for the State of Iowa.

Pleas before the circuit court of the United States within and for the district of Iowa, at a term thereof, begun and holden at Des Moines, on the second Tuesday, it being the 10th day, of May, 1864.

Be it remembered that heretofore, to wit, on the 12th day of April, A. D. 1864, the following præcipe was filed in the office of the clerk of the said circuit court, to wit:

UNITED STATES OF AMERICA:

United States circuit court for the State of Iowa.

EDWARD H. LEARNED, a citizen of Connecticut, *v.* THE CITY OF BURLINGTON, a citizen of Iowa. } No. 217.—Debt $5,000; damages $5,000.

2 The clerk will issue a summons returnable to the next term at Des Moines, in the above-entitled cause, in debt, $5,000, damages $5,000.

JAMES GRANT, *Att'y for Pl'ff.*

February 10, '64.

And afterwards, on the said 12th day of May, A. D. 1864, the following writ of summons was issued, to wit:

3 *Summons.*

UNITED STATES OF AMERICA, *District of Iowa:*

To the marshal of the district of Iowa:

In the name of the President of the United States, you are hereby commanded to summon the city of Burlington to appear before the circuit court of the United States in and for the district of Iowa, at a term to be begun and holden at Des Moines, on the second Tuesday, it being the tenth day, of May next, to answer unto Edward H. Learned, a citizen of the State of Connecticut, in an action of debt. The damages laid at $5,000.

Hereof fail not.

Witness the Hon. Roger B. Taney, chief justice of the Supreme Court of the United States, at Des Moines, this the 12th day of April, A. D. 1864, and of the independence of the United States the 88th.

[SEAL.] W. G. WOODWARD, *Clerk.*

4 *Return.*

Upon which writ was indorsed the following return, viz:

Rec'd this writ April 14, 1864. Served the within writ on the city of Burlington, by reading the same to Thomas French, mayor of the city of Burlington, on the 18th day of April, 1864, in the city of Burlington, Des Moines County, Iowa. I also left with him a true copy of this writ, at the same time and place. No copy of petition demanded.

H. M. HOXIE, *U. S. M.*,
By H. FULTON, *Dept.*

Marshal's fees:

Service	$2 00
Copy	25
Miles, 175	10 50
	12 75

And be it remembered, that on the said 12th day of April, A. D. 1864, the following petition was filed in the office of the clerk of the said circuit court, to wit:

5 UNITED STATES OF AMERICA:

United States circuit court for the State of Iowa. May term, 1864.

The city of Burlington was summoned to answer Edward H. Learned in a plea of debt, and thereupon Edward H. Learned, who avers that he is a non-resident of the State of Iowa, and a citizen of the State of Connecticut, complains of the city of Burlington, a municipal corporation existing under, and a citizen of, the State of Iowa:

For that the city of Burlington, defendant herein, at said district, by its writing obligatory dated on the seventeenth (17th) day of June, A. D. 1852, sealed with its corporate seal, signed by Lyman Cook, its mayor, and also signed by N. M. Ives, its recorder, and numbered one, (1,) of which the following is a copy, to wit:

Bond.

1852. 1852.

City of Burlington, State of Iowa.—Bond No. 1.

6 Issued by the city of Burlington under ordinance number one hundred and fifty-one, and ordinance number 158, supplementary thereto, to authorize a loan to be invested in the stock of the M't Pleasant, Trenton, Deedsville, and Brighton Plank-road and Bridge Comp'y.

Ten years after date the city of Burlington, in the State of Iowa, promises to pay to Stewart Goodall, president of the M't Pleasant, Trenton, Deedsville, and Brighton Plank-road and Bridge Company, or bearer, at the Phenix Bank, in the city of New York, one thousand dollars, for value received, without defalcation, with interest at the rate of eight per cent. per annum, payable annually at the same place, that is to say, eighty dollars on the seventeenth day of June, A. D. 1853, and a like sum on the seventeenth (17th) day of June in each year, upon the presentation of the coupons severally hereto annexed, until the payment is well and truly made of said principal sum of one thousand dollars.

In witness whereof, and in pursuance of ordinance No. 151, and ordinance No. 158, supplementary thereto, of said city, entitled "An ordinance
7 to authorize a loan to be made to be invested in the stock of the Mount Pleasant, Trenton, Deedsville, and Brighton Plank-road and Bridge Company," the mayor of said city hereto sets his hand and causes the corporate seal of said city to be affixed, and the recorder of said city countersigns the same, at the city aforesaid, this seventeenth day of June, A. D. 1852.

[SEAL.] (Signed) LYMAN COOK, *Mayor.*
(Signed) N. M. IVES, *Recorder.*

And the original of which is here shown to the court, acknowledged itself to be indebted to Stewart Goodall, president of the Mount Pleasant, Trenton, Deedsville, and Brighton Plank-road and Bridge Company, or bearer, in the sum of one thousand dollars, to be paid in the city of New York, in ten (10) years after the date thereof, viz: on the seventeenth (17th) day of June, A. D. 1862, with interest thereon at the rate of eight per cent., payable annually at the Phenix Bank, in the city of New York.

And the plaintiff avers that he is the bearer and the holder of the said bonds; that on the 17th day of June, A. D. 1862, the said bond and the principal sum therein named of $1,000 became due, and the defendant
8 became liable to pay the same to the bearer of said bond, according to the tenor thereof; which period has elapsed, and said bond is due

to the plaintiff, who avers that he is the bearer and holder thereof, and the same is not paid nor any part thereof.

And the plaintiff further avers that said defendant annexed to said bond, among others, a coupon or interest warrant, bearing date of the seventeenth (17th) day of June, A. D. 1852, of which the following is a copy, viz:

Coupon.

$80. BURLINGTON, *June 17th*, 1852.

Phenix Bank, New York:

Pay to bearer eighty dollars, being one year's interest, due on the 17th day of June, 1860, on the bond of the city of Burlington, No. 1, issued under ordinance No. 151, and ordinance No. 158, supplementary thereto, to authorize a loan to be invested in the stock of the Mount Pleasant, Trenton, Deedsville, and Brighton Plank-road and Bridge Company.

(Signed) LYMAN COOK, *Mayor.*

Countersigned: N. M. IVES, *Recorder.*

And the plaintiff avers that on the 17th day of June, A. D. 1860,
9 said one instalment of interest became due, and defendant became liable to pay the same to the bearer of said bond and coupon, according to the tenor of said bond and coupon; which period has elapsed, and said instalment is due to the plaintiff, who avers that he is the holder and bearer thereof, and that on the 17th day of June, 1860, he presented the same at the Phenix Bank, in New York City, for payment, and payment thereof was then and there refused, although demanded, and the same is wholly unpaid.

And the plaintiff further avers that said defendant annexed to said bond, among others, another coupon or interest warrant, bearing date of the 17th day of June, A. D. 1852, of which the following is a copy, viz:

Coupon.

$80. BURLINGTON, *June 17th*, 1852.

Phenix Bank, New York:

Pay to bearer eighty dollars, being one year's interest, due on the 17th day of June, 1861, on the bond of the city of Burlington, No. 1, issued under ordinance No. 151, and ordinance No. 158, supplementary thereto, to authorize a loan to be invested in the stock of the Mount Pleasant, Trenton, Deedsville, and Brighton Plank-road and Bridge Company.

10 (Signed) LYMAN COOK, *Mayor.*

Countersigned: N. M. IVES, *Recorder.*

And the plaintiff avers that on the 17th day of June, A. D. 1861, said one (1) other instalment of interest on said bond number one (1) became due, and the defendant became liable to pay the same to the bearer of said bond and coupon, according to the tenor of said bond and coupon; which period has elapsed, and said instalment is due to the plaintiff, who avers that he is the holder and bearer thereof, and that on the 17th day of June, A. D. 1861, he presented the same for payment at the Phenix Bank, in New York City, and payment was then and there demanded and refused, and the same is wholly unpaid.

And the plaintiff further avers that said defendant annexed to said bond, among others, another coupon or interest warrant, bearing date of the seventeenth (17th) day of June, A. D. 1852, of which the following is a copy, viz:

Coupon.

$80. BURLINGTON, *June 17th*, 1852.

Phenix Bank, New York:

Pay to bearer eighty dollars, being one year's interest, due on the 17th day of June, 1862, on the bond of the city of Burlington, No. 1, is-
11 sued under ordinance No. 151, and ordinance No. 158, supplementary thereto, to authorize a loan to be invested in the stock of the Mount Pleasant, Trenton, Deedsville, and Brighton Plank-road and Bridge Company.

(Signed) LYMAN COOK, *Mayor.*

Countersigned: N. M. IVES, *Recorder.*

And the plaintiff avers that on the 17th day of June, A. D. 1862, said one (1) other instalment of interest on said bond number one (1) became due, and the defendant became liable to pay the same to the bearer of said bond and coupon, according to the tenor of said bond and coupon; which period has elapsed, and said instalment is due to the plaintiff, who avers that he is the holder and bearer thereof, and that on the 17th day of June, A. D. 1862, he presented the same for payment at the Phenix Bank, in New York City, and payment thereof was then and there refused, though demanded, and the same is wholly unpaid.

2d count.

And also, for that the said defendant, at said district, by its other writing obligatory, dated on the seventeenth (17th) day of June, A. D. 1852,
12 sealed with its corporate seal, signed by Lyman Cook, its mayor, and countersigned by N. M. Ives, its recorder, and numbered two, (2,) of which the following is a copy, viz:

1852. *Bond.* 1852.

City of Burlington, State of Iowa.—Bond No. 2.

Issued by the city of Burlington under ordinance number one hundred and fifty-one, and ordinance number 158, supplementary thereto, to authorize a loan to be invested in the stock of the M't Pleasant, Trenton, Deedsville, and Brighton Plank-road and Bridge Co.

Ten years after date the city of Burlington, in the State of Iowa, promises to pay to Stewart Goodalls, president of the Mount Pleasant, Trenton, Deedsville, and Brighton Plank-road and Bridge Company, or bearer, at the Phenix Bank, in the city of New York, one thousand dollars, for value received, without defalcation, with interest at the rate of eight per cent. per annum, payable annually at the same place, that is to say, eighty dollars on the seventeenth day of June, A. D. 1863, and a like sum on the seven-
13 teenth day of June in each year, upon presentation of the coupons severally hereto annexed, until the payment is well and truly made of said principal sum of one thousand dollars.

In witness whereof, and in pursuance of ordinance No. 151, and ordinance No. 158, supplementary thereto, of said city, entitled "An ordinance to authorize a loan to be invested in the stock of the Mount Pleasant, Trenton, Deedsville, and Brighton Plank-road and Bridge Company," the mayor of said city hereto sets his hand and causes the corporate seal of said [SEAL.] city to be affixed, and the recorder of the said city countersigns the same, at the city aforesaid, this seventeenth day of June, A. D. 1852.

(Signed) LYMAN COOK, *Mayor.*

Countersigned: N. M. IVES, *Recorder.*

And the original of which is here shown to the court, acknowledged itself to be indebted to Stewart Goodall, president of the Mount Pleasant, Trenton, Deedsville, and Brighton Plank-road and Bridge Company, or
14 bearer, in the sum of one thousand dollars, to be paid in the city of New York, in ten (10) years after the date thereof, to wit, on the seventeenth (17th) day of June, A. D. 1862, with interest thereon at the rate of eight per cent., payable annually at the Phenix Bank, in the city of New York.

And the plaintiff avers that he is the bearer and holder of said bond; that on the seventeenth day of June, A. D. 1862, the said bond and the principal sum therein named, of $1,000, became due, and the defendant herein became liable to pay the same to the bearer of said bond, according to the tenor thereof; which period has elapsed, and said bond is due to the plaintiff, who avers that he is the bearer and holder thereof, and the same is not paid, nor any part thereof.

And the plaintiff further avers that said defendant annexed to said bonds, among others, a coupon or interest warrant, bearing date of the seventeenth (17th) day of June, A. D. 1852, of which the following is a copy:

Coupon.

$80. BURLINGTON, *June 17th*, 1852.

Phenix Bank, New York:

Pay to bearer eighty dollars, being one year's interest, due on the
15 17th day of June, 1860, on the bond of the city of Burlington No. 2, issued under ordinance No. 151, and ordinance No. 158, supplementary thereto, to authorize a loan to be invested in the stock of the Mount Pleasant, Trenton, Deedsville, and Brighton Plank-road and Bridge Company.

(Signed) LYMAN COOK, *Mayor.*

Countersigned: N. M. IVES, *Recorder.*

And the plaintiff avers that on the 17th day of June, A. D. 1860, said one instalment of interest became due, and defendant became liable to pay the same to the bearer of said bond and coupon, according to the tenor of said bond and coupon; which period has elapsed, and said instalment is due to the plaintiff, who avers that he is the holder and bearer thereof, and that on the 17th day of June, A. D. 1860, he presented the same for payment at the Phenix Bank, in New York City, and payment thereof was then and there demanded and refused, and the same is wholly unpaid.

16 And the plaintiff further avers that said defendant annexed to said bond, among others, another coupon or interest warrant, bearing date of the seventeenth (17th) day of June, A. D. 1852, of which the following is a copy, viz:

Coupon.

$80. BURLINGTON, *June 17th*, 1852.

Pay to bearer eighty dollars, being one year's interest, due on the 17th day of June, A. D. 1861, on the bond of the city of Burlington No. 2, issued under ordinance No. 151, and ordinance No. 158, supplementary thereto, to authorize a loan to be invested in the stock of the Mount Pleasant, Trenton, Deedsville, and Brighton Plank-road and Bridge Company.

(Signed) LYMAN COOK, *Mayor.*

Countersigned: N. M. IVES, *Recorder.*

And the plaintiff avers that on the 17th day of June, A. D. 1861, said one (1) other instalment of interest on said bond No. two (2) became due, and

the defendant became liable to pay the same to the bearer of said bond and coupon; which period has elapsed, and said instalment is due to the plaintiff, who avers that he is the holder and bearer thereof, and that on the 17th day of June, A. D. 1861, he presented the same for payment at the
17 Phenix Bank, in New York City, and payment thereof was then and there demanded and refused, and the same is wholly unpaid.

And the plaintiff further avers that said defendant annexed to said bond, among others, another coupon or interest warrant, bearing date of the seventeenth (17th) day of June, A. D. 1852, of which the following is a copy, viz:

Coupon.

$80. BURLINGTON, *June 17th*, 1852.

Phenix Bank, New York:

Pay to bearer eighty dollars, being one year's interest, due on the 17th day of June, A. D. 1862, on the bond of the city of Burlington No. 2, issued under ordinance No. 151, and ordinance No. 158, supplementary thereto, to authorize a loan to be invested in the stock of the Mount Pleasant, Trenton, Deedsville, and Brighton Plank-road and Bridge Company.

(Signed) LYMAN COOK, *Mayor.*

Countersigned: N. M. IVES, *Recorder.*

And the plaintiff avers that on the 17th day of June, A. D. 1862, said one (1) other instalment of interest on said bond No. two (2) became
18 due, and the defendant became liable to pay the same to the bearer of said bond and coupon; which period has elapsed, and said instalment is due to the plaintiff, who avers that he is the holder and bearer thereof, and that on the 17th day of June, A. D. 1862, he presented the same for payment at the Phenix Bank, in New York City, and payment thereof was then and there demanded and refused, and the same is wholly unpaid.

3d. And also for that on the 1st day of September, A. D. 1862, the said defendant became indebted to the plaintiff in the sum of two thousand four hundred and eighty dollars ($2,480) for money before that time lent and advanced by the plaintiff to the defendant, at defendant's request, and in a like sum for money paid out by the plaintiff, and in a like sum for money had and received by defendant for the plaintiff, at defendant's request, which said several sums the said defendant promised to pay to plaintiff on request.

19 And the plaintiff further avers that when each of the said interest warrants, promissory notes, and checks or bills of exchange, and bonds became due, the rate of exchange on New York was two (2) per cent., which sum he is entitled to recover of defendant as damages upon each of said bonds and coupons.

And the plaintiff avers that he purchased each of said bonds and interest notes or coupons on the faith of the judicial decisions of the supreme court of the State of Iowa that the same were valid and binding in the hands of the holders thereof.

Yet said defendant, though requested, has refused and neglected to pay said several sums of money or any part thereof or either of them. Whereby an action has accrued to the plaintiff to have and recover of said defendant the sum of five thousand dollars debt and five thousand dollars damages, and therefore he sues.

JAMES GRANT, *Plaintiff's Attorney.*

20 And afterwards, to wit, on the 13th day of April, A. D. 1864, there was filed in the said clerk's office the following amendment to the petition of the plaintiff, viz:

Amendment to petition.

U. S. circuit court, district of Iowa.

LEARNED
v.
CITY OF BURLINGTON. } No. 217.

Now comes the plaintiff and amends his petition, and says that when the said bonds were executed and delivered by the defendant there was indorsed thereupon the following:

Extract from the charter of the city of Burlington.

SEC. 27. That whenever in the opinion of the city council it is expedient to borrow money for any public purpose the question shall be submitted to the citizens of Burlington, the nature and object of the loan shall be
21 stated and a day fixed for the electors of said city to express their wishes. The like [notice] shall be given as in cases of an election. The loan shall not be made unless two thirds of all the votes polled at such election shall be given in the affimative.

And likewise there was indorsed by the defendant the following copies of the ordinances referred to in the body of the said bonds, to wit:

Ordinance No. 151.

An ordinance to authorize an investment of two thousand dollars in the stock of the Mount Pleasant, Trenton, Deedsville, and Brighton Plank-road Company.

Whereas at a meeting of the city council, held on the 17th day of February, A. D. 1851, a resolution was adopted authorizing the mayor of said city to submit to the people at the next annual charter election the question whether or not the city council shall be authorized to borrow the sum of five thousand dollars, to be invested in the stock of bridges over
22 Skunk River, at Lowell, Keene, and Deedsville; and whereas proclamation was duly made in the proclamation of the mayor for the annual charter election on the first Monday of March, A. D. 1851, and at said election the said question was submitted to the qualified electors of said city; and whereas it appears to the council from the return of the election that more than two thirds of all the votes cast at said election were in favor of said loan, whereby such loan is authorized to be made according to the charter of said city: Therefore be it ordained by the city council of Burlington—

SEC. 1. That the mayor of said city be, and he hereby is, authorized to procure a loan of two thousand dollars, at a rate of interest not exceeding eight per cent. per annum, payable annually at the city treasury of said city, and for a term not less than ten years, in the name and upon the faith of the city of Burlington, and that so soon as the means can be obtained to pay for the stock of said road and bridge company, the mayor be
23 authorized to subscribe for stock to the amount of two thousand dollars in the name of said city, and to pay for the same upon the usual certificates of stock being issued to said city for the amounts so subscribed.

SEC. 2d. That the mayor be authorized to issue the bonds of said city for the purpose aforesaid, with coupons attached for the interest that may fall due from time to time; which said bonds and coupons shall be signed by the mayor and countersigned by the recorder, and said bonds shall be sealed with the seal of said city.

SEC. 3d. That so soon as the mayor shall have subscribed and paid for said stock as aforesaid, it shall be his duty to file with the recorder of said city the certificates aforesaid.

SEC. 4th. That it shall be the duty of the city council of said city to provide means to meet the payment of said bonds and coupons when the same may become due, according to the contract entered into for said
24 loan, and to pay the same, and the solemn faith of said city is hereby pledged for the payment of said bonds and interest.

SEC. 5th. That on all questions arising before the stockholders of said road and bridge company on which the stockholders thereof are entitled to vote the city stock shall be represented by such persons as the city council may authorize to represent said city.

LYMAN COOK, *Mayor.*

Passed March 9th, 1852.

CHARLES MADINA, *Recorder.*

Supplementary ordinance No. 158.

An ordinance supplemental to an ordinance to authorize the investment of two thousand dollars in the stock of the Mt. Pleasant, Trenton, Deedsville, and Brighton Plank-road and Bridge Company.

Be it ordained by the city council of the city of Burlington, That the president of the Mt. Pleasant, Trenton, Deedsville, and Brighton Plank-road and Bridge Company be allowed to return two thousand dollars of the
25 bonds heretofore issued by the city of Burlington to the mayor of said city, and receive therefor the amount so allowed in bonds payable at the same time and bearing eight per cent. interest, payable annually in the city of New York. That so much of said ordinance to which this is amendatory as conflicts with this ordinance be, and the same is hereby, repealed.

LYMAN COOK, *Mayor.*

Passed June 15, 1852.

N. M. IVES, *City Recorder.*

And the plaintiff avers that said city of Burlington had before that time borrrowed money and taken stock in the Burlington and Mount Pleasant Plank-road Company, a plank-road leading from the city of Burlington to Mount Pleasant, in Iowa, and the plank-road and bridge company named in those bonds, was an extension, in fact, of the former into the interior of Iowa, and designed to bring the trade and commerce of the said interior to Burlington; and said bonds were issued and the money received thereon
26 and expended by the city of Burlington for a public purpose within the meaning of the charter of said city.

GRANT, *for Pl'ff.*

Demurrer.

And afterwards, on the said 13th day of May, A. D. 1864, was filed the following demurrer, by the defendant:

EDWARD H. LEARNED
v.
THE CITY OF BURLINGTON.

Now comes the defendant, and as to the plaintiff's petition and amended petition, says that the same is insufficient in law to enable the plaintiff to have and maintain his said action; and for cause of demurrer sets down the following:

1st. The petition shows no authority in the mayor and recorder of the city of Burlington to issue the bonds sued on.

2d. The petition shows on its face that the mayor and recorder of said city had no power or authority to issue said bonds.

27 3d. The section of the city charter cited in said petition confers no authority on the city or the officers thereof to issue said bonds for the purpose stated.

4th. The purpose for which said petition alleges said bonds to have been issued is not a public purpose within the meaning of said section of the city charter.

5th. Said petition shows no legal cause of action.

CHAS. H. PHELPS, *Att'y for Def't.*

28 Pleas before the circuit court of the United States within and for the district of Iowa, at a term thereof begun and holden at Des Moines, on the second Tuesday, it being the 10th day of May, A. D. 1864.

On the 13th day of May, A. D. 1864, it being of the May term of the said court, 1864, the following entry of record is made, to wit:

EDWARD H. LEARNED
v.
THE CITY OF BURLINGTON. } No. 217.

The said parties now appearing by their counsel the plaintiff files his amended petition, and upon motion it is ordered the defendant have leave to withdraw her answer and to file a demurrer.

And afterward, such demurrer having been filed, the cause came on for hearing upon the same. And the said demurrer having been heard, with the arguments of counsel, the same is sustained by the court; and the plaintiff electing to stand upon his petition and amended petition, it is

29 therefore considered by the court that the plaintiff has shown no cause of action in his position or declaration, and that the defendant go hence without day and recover of the plaintiff her costs in this action accrued, taxed at $, and that she have execution therefor.

And afterward came the plaintiff, by his counsel, and sued out his writ of error, which was allowed by the court, and filed his copy thereof and tendered his bond with surety, which was ordered by the court to be entered as approved.

30 UNITED STATES OF AMERICA, *District of Iowa:*

I, W. G. Woodward, clerk of the circuit court of the United States within and for the district of Iowa, hereby certify that the foregoing twenty-nine pages of writing and print constitute a full, true, and perfect transcript of the record and proceedings in the said circuit court in the cause of Edward H. Learned against the city of Burlington, as fully as the same remain of record in my office.

In testimony whereof, I hereunto set my hand, and affix the seal of the said court, at Des Moines, this the 23d day of August, A. D. 1864.

[SEAL.] W. G. WOODWARD,
Clerk of the said Circuit Court.

Costs.

Clerk circuit court	$8 65
Att'y	20 00
Marshal	12 75
	41 40
Transcript, certif., and seal	5 50
	46 90

32 UNITED STATES OF AMERICA, *ss:*

The President of the United States of America to the judges of the circuit court of the United States for the ninth circuit and for the district of Iowa, greeting:

Because in the record and proceedings, as also in the rendition of a judgment in a plea in said circuit before you, between Edward H. Learned, plaintiff, and the city of Burlington, defendant, a manifest error hath happened, to the damage of said plaintiff, as alleged by his complaint; and it being fit that the error, if any there be, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, you are hereby commanded, if judgment be therein given, that under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same at Washington, on the first Monday in December next, in said Supreme Court, to be then and there held, that the record and proceedings aforesaid being inspected, the said Supreme Court may cause further justice to be done therein, to correct that error, what of right and according to the law and custom of the United States should be done.

33 Witness the Hon. Roger B. Taney, chief justice of the United States, this the 16th day of May, A. D. 1864, and of the independence of the United States the eighty-eighth.

In testimony whereof, the clerk of said court has affixed his name and seal of said circuit court the date above written.

[SEAL.] W. G. WOODWARD,
Clerk of the Circuit Court of the United States, District of Iowa.

The execution of this writ appears by the transcript hereto annexed. A copy of this writ was lodged in this office for the defendant on the 18th day of May, 1864.

W. G. WOODWARD, *Clerk.*

Filed May 18, '64.

W. G. WOODWARD, *Clerk C. C. U. S.*

34 *Citation.*

UNITED STATES OF AMERICA, *ss:*

To the city of Burlington, Iowa, greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, to be holden at Washington on the first Monday in December next, pursuant to a writ of error, filed in the clerk's office of the circuit court of the United States for the ninth circuit and for the district of Iowa, wherein Edward H. Learned is plaintiff, and you are defend-

ant in error, to show cause, if any there be, why the judgment in said writ of error mentioned should not be corrected and speedy justice should not be done to the parties in that behalf.

Witness the Hon. Samuel F. Miller, one of the justices of the said Supreme Court of the United States, this the 18th day of May, A. D. 1864.

SAM. F. MILLER, *Judge 9th circuit.*

The city of Burlington does hereby acknowledge service hereof by reading and by copy thereof, duly served upon us this 28th day of May, A. D. 1864.

CHAS. H. PHELPS, *Def't's Att'y.*

35 Know all men by these presents that we, Edward H. Learned, principal, and Charles Whitaker, as surety, are held and firmly bound to the city of Burlington, Iowa, in the penal sum of two hundred dollars, to which payment we bind ourselves and each of us.

Given under our hands this 16th day of May, A. D. 1864.

The condition of this obligation is this, that if said obligors shall duly prosecute to effect a writ of error from the Supreme Court of the United States to the circuit court of the same to the district of Iowa, in a cause wherein said obligor, E. H. Learned, is plaintiff in error, and said obligee defendant in error, and answer to the defendant in error, and pay all damages and costs if they fail to make their plea good, this obligation is to be void; otherwise, to remain in full force.

EDWARD H. LEARNED,
By J. GRANT, *his Att'y.*
CHARLES WHITAKER.

A true copy.
Attest: W. G. WOODWARD, *Clerk C. C. U. S., Iowa.*

36 *Assignment of errors.*

U. S. Supreme Court, December T., A. D. 1864.

EDWARD H. LEARNED, plaintiff in error,
vs.
THE CITY OF BURLINGTON, defendant in error.

Writ of error from the district of Iowa.

Now comes the plaintiff in error in the record of the above-entitled cause and says that the court below erred in its decision, and thereupon the plaintiff in error assigns the following causes, to wit:

1st. The court erred in sustaining demurrer of defendant in error to petition and amended petition of plaintiff in error.

2d. The court erred in rendering judgment in favor of defendant in error that said bonds sued on were issued without authority of law and were unconstitutional and void.

Wherefore plaintiff in error prays for a reversal of said decision and for costs.

JAMES GRANT, *Att'y for Pl'ff in Error.*

Filed September 27, 1864.

Supreme Court of the United States.

DECEMBER TERM, 1865.

ELIZUR MITCHELL & WM. B. GLOVER, PL'FFS IN ERROR,
Against
THE CITY OF BURLINGTON, DEF'T IN ERROR.

AND

EDWARD W. LEARNED, PL'FF IN ERROR,
Against
THE CITY OF BURLINGTON, DEF'T IN ERROR.

BRIEF FOR DEFENDANTS IN ERROR.

CHAS. H. PHELPS,
Of Counsel for Defts. in Error.

Supreme Court of the United States.

ELIZUR MITCHELL & WM. B. GLOVER, Pl'ffs in Error,

Against

THE CITY OF BURLINGTON, Def't in Error.

AND

EDWARD W. LEARNED, Pl'ff in Error,

Against

THE CITY OF BURLINGTON, Def't in Error.

BRIEF FOR DEFENDANTS IN ERROR.

These cases are both upon bonds issued on subscriptions for Plank Road stock, and are in principle the same.

The purpose for which the bonds were issued, appears on their face, and the holder is chargeable with notice of their invalidity if the city had no power to issue them.

Not being *Rail Road* bonds, they are not made valid by the act of Jan. 25th, 1855, cited in *Meyer* v. *Muscatine*, which was passed some *five years after* they were issued.

Their validity depends *entirely* upon the construction of the city charter, an act of the Iowa Legislature.

These cases differ radically from those on *County* bonds, which went upon the construction of the general law organizing Counties and defining their powers. Hence the cases on County bonds are inapplicable.

Counsel for Pl'ff in Error admit that "as to Plank Roads" there had been, at the time these cases were decided below, "no decision" either in this, or the Supreme Courts of Iowa. *Vide* p. 8, in Judge Grant's brief in *Mitchell & Glover* v. *The City of Burlington*, on file in that case.

Since then the question of the power of cities to issue such bonds, has been passed upon by the Supreme Court of the State of Iowa, in three different cases, one being under the charter of the City of Burlington, and they have, *in every instance*, held that the city had no power to issue them. Their opinions are *unanimous* and *uniform*.

Ten Eyck v. *Keokuk*, 15 Iowa, 486.
Clark v. *Des Moines*, MS. opinion.
Chamberlain v. *Burlington*, MS. opinion.

In the latter case the Court say, That the question as to *city* bonds had never been presented in that court until after the decisions of *Gelpcke* v. *Dubuque*, and *Meyer* v. *Muscatine*.

The right of the State to enact and construe its own laws, subject only to the Constitution, Laws and Treaties of the U. S., is too well settled in this court to be

either ignored, or tampered with, and is a right which no State in this Union can, or will, ever surrender.

Shelby v. *Guy*, 11 Wheat., 361.
Mc Cluny v. *Silliman*, 3 Pet., 277.
Van Rensselaer v. Kearney, 11 How., 297.
Webster v. *Cooper*, 14 Ib., 594.
Elmendorf v. *Taylor*, 10 Wheat., 152.
Bark v. *Dudley*, 2 Pet., 492.
United States v. *Morrison*, 4 Pet., 124.
Green v. *Neal*, 6 Ib., 291.
Leffingwell v. *Warren*, 2 Black., 599.

In the last case *this* Court say, "The construction given to a State statute by the highest judicial tribunal of such State, is regarded as *a part of the Statute, and is as binding upon the Courts of the United States as the text.*"

It is impossible, that the Court can reverse these cases, *on principle*, without first overruling the above cases.

[redacted] CHAS. H. PHELPS,

Of Counsel for Defts. in Error.

SUPREME COURT OF THE UNITED STATES.

EDWARD H. LEARNED,
Plaintiff in Error,
vs.
THE CITY OF BURLINGTON,
Defendant in Error.

From the Circuit Court of the United States for the District of Iowa.

Argument for Plaintiff.

JAMES GRANT, ATTORNEY FOR PLAINTIFF IN ERROR.

SUPREME COURT OF THE UNITED STATES.

EDWARD H. LEARNED,
Plaintiff in Error,
vs.
THE CITY OF BURLINGTON,
Defendant in Error.

From the Circuit Court of the United States for the District of Iowa.

Statement of the Case.

Edward H. Learned brought his action of debt in the Court below, to recover principal and interest on two bonds issued by the city of Burlington to Bearer, for one thousand dollars each, numbered 1, 2, amounting, with principal and interest, to more than twenty-five hundred dollars.

These bonds were issued by the city of Burlington to assist is building a plank road called the Mount Pleasant, Trenton, Deedsville and Brighton Plank Road and Bridge Company. This road was an extension of the Burlington and Mount Pleasant Plank Road, which latter road extended from Burlington to Mount Pleasant, in Iowa, in which the city of Burlington had previously taken stock and issued bonds to a large amount. This road was an extension, in fact, of the former into the interior of Iowa, and designed to bring the trade and commerce of said interior to Burlington. The bonds were issued and the money received thereon and expended by the city of Burlington, for a public purpose within the meaning of the charter of said city.

The following are copies of the bonds, the ordinances of the city and the charter of the city, under which they were issued:

1852. 1852.

CITY OF BURLINGTON, STATE OF IOWA.

Bond No. 1,

Issued by the city of Burlington, under ordinance number 151 and ordinance number 158, supplementary thereto, to authorize a loan to be invested in the stock of the Mt. Pleasant, Trenton, Deedsville and Brighton Plank Road and Bridge Company.

Ten years after date, the city of Burlington, in the State of Iowa, promises to pay to Stewart Goodrell, President of the Mount Pleasant, Trenton, Deedsville and Brighton Plank Road and Bridge Company, or bearer, at the Phœnix Bank, in the city of New York, one thousand dollars, for value received, without defalcation, with interest at the rate of eight per cent. per annum, payable annually, at the same place.

That is to say, eighty dollars on the seventeenth day of June, A D. 1853, and a like sum on the seventeenth day of June in each year, upon presentation of the coupons, severally hereto annexed, until the payment is well and truly made of said principal sum of one thousand dollars.

In witness whereof, and in pursuance of ordinance No. 151 and ordinance No. 158, supplementary thereto, of said city, entitled "An ordinance to authorize a loan to be invested in the stock of the Mount Pleasant, Trenton, Deedsville and Brighton Plank Road and Bridge Company, the Mayor of the said city hereto sets his hand and causes the corporate seal of said city to be affixed, and the Recorder of the said city countersigns the same, at the city aforesaid, this seventeenth day of June, A. D. 1852.

(Signed) LYMAN COOK, Mayor.

(Countersigned) N. M. Ives, Recorder.

And endorsed on said bond are the following, to-wit:

Extract from the charter of the city of Burlington:

Sec. 27. That whenever in the opinion of the City Council it is expedient to borrow money for any public purpose, the

question shall be submitted to the citizens of Burlington—the nature and object of the loan shall be stated, and a day fixed for the electors of the said city to express their wishes. The like notice shall be given as in cases of an election. The loan shall not be made unless two-thirds of all the votes polled at such election shall be given in the affirmative.—*Acts of* 1845, *p.* 84.

Ordinance No. 151.

An ordinance to authorize an investment of two thousand dollars in the stock of the Mount Pleasant, Trenton, Deedsville and Brighton Plank Road and Bridge Company.

Whereas, at a meeting of the City Council of the city of Burlington, held on the 17th day of February, A. D. 1851, a resolution was adopted authorizing the Mayor of said city to submit to the people, at the next annual charter election, the question, whether or not the City Council should be authorized to borrow the sum of five thousand dollars to be invested in the stock of bridges over Skunk river, at Lowell, Rome and Deedsville. And whereas, proclamation was duly made in the proclamation of the Mayor for the annual charter election on the first Monday in March, to-wit: on the 3d day of March, A. D. 1851, and at said election, the said question was submitted to the qualified electors of said city. And whereas, it appears to the Council, from the returns of the election, that more than two-thirds of all the votes cast at said election were in favor of said loan, whereby such loan is authorized to be made according to the charter of said city. Therefore be it ordained by the City Council of the city of Burlington:

Sec. 1. That the Mayor of the city of Burlington be and hereby is authorized to procure a loan of two thousand dollars at a rate of interest not exceeding eight per cent. per annum, payable annually at the treasury of the said city, and for a term of time not less than ten years, in the name and upon the faith of the city of Burlington; and that so soon as the means can be obtained to pay for the stock of said Road and Bridge Company, the Mayor be authorized to subscribe for stock to the said amount of two thousand dollars, in the name of said city,

and to pay for the same upon the usual certificate being issued to said city for the amount so subscribed.

SEC. 2. That the Mayor be authorized to issue the bonds of said city for the purpose aforesaid, with coupons attached, for the interest that may fall due from time to time, which said bonds and coupons shall be signed by the Mayor and countersigned by the Recorder, and said bonds shall be sealed with the seal of said city.

SEC. 3. That so soon as the Mayor shall have subscribed and paid for the stock as aforesaid, it shall be his duty to file with the Recorder of said city the certificates aforesaid.

SEC. 4. That it shall be the duty of the City Council of said city to provide means to meet the payment of said bonds and coupons when the same may become due, according to the contract entered into for said loan, and to pay the same, and the solemn faith of said city is hereby pledged for the payment of said bonds and interest.

SEC. 5. That on all questions arising before the stockholders of said Road and Bridge Company, on which the stockholders thereof are entitled to vote, the city stock shall be represented and shall vote by such persons as the City Council may authorize to represent said city

LYMAN COOK, Mayor.

Passed March 9th, 1852.

CHARLES MADERA, Recorder.

SUPPLEMENTARY ORDINANCE No. 158.

An ordinance supplementary to an ordinance entitled "An ordinance to authorize an investment of two thousand dollars in the stock of the Mount Pleasant, Trenton, Deedsville and Brighton Plank Road and Bridge Company."

Be it ordained by the City Council of the city of Burlington, that the President of the Mount Pleasant, Trenton, Deedsville and Brighton Plank Road and Bridge Company be allowed to return two thousand dollars of the bonds heretofore issued by the city of Burlington, to the Mayor of said city, and receive therefor the amount so allowed in bonds payable

at the same time, and bearing eight per cent. interest, payable annually in the city of New York.

That so much of the ordinance, and to which this is amendatory, as conflicts with this ordinance, be and is hereby repealed.

LYMAN COOK, Mayor.

Passed June 15th, 1852.

N. M. IVES, City Recorder.

These facts are set out in the declaration and amendment, and the defendant below demurred thereto, for the following causes:

1st. The petition shows no authority in the Mayor and Recorder to issue the bonds.

2d. The petition shows on its face no authority to issue these bonds.

3d. The section of the city charter cited, shows no authority to issue such bonds.

4th. The purpose for which said petition alleges said bonds to have been issued, was not a public purpose within the meaning of said section.

5th. The petition rhows no legal cause of action.

The Court below sustained this demurrer. The plaintiff abided thereby, and brings his writ of error to this Court.

Argument.

This and the case of Mitchell & Glover vs. The City of Burlington present the single question, and that was the question decided by the Court below, whether the Legislature of Iowa could, under the Constitution, authorize the town council of Burlington, by a vote of the people, to borrow money to aid in building plank roads leading to and from the town, and inducing the country people to trade therewith.

The grant of legislative power was ample. The corporation had authority to borrow money for any public purpose, upon submitting the question to a vote of the people, and a majority voting in favor of it. There is no contest about the power, or that forms of exercising the power were complied with.

The sole question is one of constitutional power on the part of the Legislature.

As to plank roads, there has been no decision either in this or the Supreme Court of Iowa. The decisions of this Court in the cases here cited, conclusively establish that the Legislature had such constitutional power in relation to corporations—like towns and counties—to authorize them to borrow money to build railroads.

Gelpcke vs. City of Dubuque, 1 Wallace.
Meyer & Meister vs. City of Muscatine, 1 Wallace.

These cases were decided, upon an act of the Legislature, in words applying to Dubuque and Muscatine, precisely like this, "to borrow money upon a vote of the people for any public purpose."

Now, we need not argue to this Court, that if the building of a railroad to or through a town or county is a public purpose, the building of a plank road is, for the like reason, a public purpose. No human ingenuity can draw any distinction between them.

The Court below entirely overlooked the following language of this Court in Gelpcke vs. Dubuque:

"The qualifications, coupled with the grant of power in the 27th section of the act of incorporation, are not now in question. If they were, the result would be the same."

The real question has already been fully decided by this Court—unless some skill shall make a plank road less a public purpose than a railroad—and we believe this Court will not hesitate to reverse the judgment below in both cases.

JAMES GRANT,
Atty. for Pltff. in Error.

SUPREME COURT OF THE UNITED STATES.

ELIZUR MITCHELL AND JOHN B. GLOVER,
Plaintiffs in Error,
vs.
THE CITY OF BURLINGTON,
Defendant in Error.

From the Circuit Court of the United States for the District of Iowa.

Argument for Plaintiff.

JAMES GRANT, ATTORNEY FOR PLAINTIFF IN ERROR.

SUPREME COURT OF THE UNITED STATES.

ELIZUR MITCHELL AND JOHN B. GLOVER,
Plaintiffs in Error,
vs.
THE CITY OF BURLINGTON,
Defendant in Error.

From the Circuit Court of the United States for the District of Iowa.

Statement of the Case.

This action, like that of Learned vs. The City of Burlington, is upon five bonds for $1000 each, given by the city of Burlington to E. W. Clark, Bro. & Co., or bearer, for subscription by said city to the stock of the Burlington and Mount Pleasant Plank Road Company. The plank road was built from Burlington to Mount Pleasant, a town in Iowa. These bonds were issued in pursuance of a popular vote, ordinances of the city and the charter thereof.

The following is a copy of the bonds:

CITY OF BURLINGTON, IOWA.

BOND No. 5,

Issued by the city of Burlington under an ordinance passed Feb. 25, A. D. 1860.

PLANK ROAD LOAN.

Ten years after date, the city of Burlington, State of Iowa, promises to pay to E. W. Clark, Brother & Co., or bearer, at

the Philadelphia Bank, Pennsylvania, one thousand dollars, for value received, without defalcation, with interest on the same at 10 per cent. per annum, payable annually for the two first years, and semi-annually thereafter, at the same place. That is to say, one hundred dollars on the twenty-third day of March, A. D. 1851, and a like sum on the twenty-third day of March, A. D. 1852, and fifty dollars on the twenty-third day of September, A. D. 1852, and a like sum semi-annually thereafter in each year, upon presentation of the coupons severally hereto annexed, until the payment is well and truly made of the said sum of one thousand dollars.

In witness whereof, and in pursuance of an ordinance of said city, entitled "An ordinance to provide for procuring and investing the loan of $10,000 to the city, to be invested in the stock of the Burlington and Mount Pleasant Plank Road Company, and for other purposes," the Mayor of said city hereto sets his hand and caused the corporate seal of said city to be affixed, and the Recorder of said city to countersign the same, at the city aforesaid, this twenty-third day of March, A. D. eighteen hundred and fifty.

[SEAL.] (Signed,) HENRY W. STARR, Mayor.
(Signed,) I. F. STEPHENS, Recorder.

And endorsed on said bond is the following, to-wit:

Extract from an act of the Legislature of Iowa, approved June 10th, 1845, entitled an act to incorporate and establish the city of Burlington, and for revising and repealing all laws and parts of laws heretofore enacted on that subject:

SEC. 27. That whenever in the opinion of the City Council it is expedient to borrow money for any public purpose, the question shall be submitted to the citizens of Burlington—the nature and object of the loan shall be stated, and a day fixed for the electors of the said city to express their wishes. The like notice shall be given as in cases of an election. The loan shall not be made unless two-thirds of all the votes polled at such election shall be given in the affirmative.—*Acts of* 1845, *p.* 84.

At a meeting of the City Council of the city of Burlington, held on the 19th day of March, A. D. 1849, the following resolution was passed:

Resolved, That the Mayor be and he is hereby authorized, in issuing his forthcoming proclamation for the election of city officers, to give notice, in said proclamation, that in accordance with the provisions of the charter of said city, the question will be submitted to the legal voters of said city, whether or not the City Council shall be authorized to contract for a loan of not less than five nor more than ten thousand dollars, at not more than ten per cent. interest, and for a period of not less than ten years, and invest said loan in stock in the "Burlington and Mount Pleasant Plank Road Company."

At a meeting of the Council held on the 4th day of April, 1849, on a canvass of the votes for and against the above mentioned loan, there appeared—total for the loan, 394; total against the loan, 46.

An ordinance to authorize a loan to be invested in plank road stock.

Whereas, at a meeting of the City Council of the city of Burlington, held on the 19th day of March, 1849, a resolution was adopted, authorizing and requiring the Mayor of said city to submit to the people, at the next election, by proclamation, the question, whether or not the City Council shall be authorized to contract for a loan of not less than five nor more than ten thousand dollars, at a rate of interest not exceeding ten per cent., and for a period of not less than ten years, to be invested in stock of the Burlington and Mount Pleasant Plank Road Company. And whereas, proclamation was duly made in the proclamation of the Mayor for the election on the 2d day of April, A. D. 1849, and at such election the said question was submitted to the qualified electors of said city. And whereas, it appears to the Council, from the returns of the election, that more than two-thirds of all the votes cast at such election were in favor of such loan, whereby such loan is authorized to be made according to the charter of said city;

therefore be it ordained by the City Council of the city of Burlington:

SEC. 1. That a loan of not less than five nor more than ten thousand dollars shall be made by said city, at a rate of interest not exceeding ten per cent., and for a space of time not less than ten years, to be invested in the stock of the Burlington and Mount Pleasant Plank Road Company, in the name of said city.

SEC. 2. That in order to facilitate the obtaining of said loan, the Mayor is hereby required to cause proposals for the same to be published in the papers of this and other cities, as he may deem expedient.

SEC. 3. The Mayor of said city shall receive proposals for said loan, to be made in sums not less than two hundred dollars, until the same shall amount to five thousand dollars or more, when he shall report the same to the City Council, and if approved by them, bonds shall be issued for the same; and so in like manner, from time to time, until the same shall amount to the sum of ten thousand dollars.

HENRY W. STARR, Mayor.

Attest, WM. SAUNDERS, Recorder.

An ordinance to provide for procuring and investing the loan of $10,000 to the city, to be invested in the stock of the Burlington and Mount Pleasant Plank Road Company, and for other purposes.

SEC. 1. Be it ordained, that the Mayor of said city be authorized to make a contract for said loan, that the bonds of said city shall be issued for said sum of $10,000, in such sums as may be desired and according to the terms of said loan, to be executed in the name of the city, to be signed by the Mayor and countersigned by the Recorder and sealed with the seal of said city, and the solemn faith of said city is pledged for the full payment of said bonds and interest.

SEC. 2. That when such loan is procured, the Mayor be authorized to subscribe to the stock of the Burlington and Mount Pleasant Plank Road Company the sum of ten thousand dollars, in the name of said city, and to receive certificates

of stock for the same, and to pay over to said company the amount of said stock.

SEC. 3. That the Mayor be authorized to enter into an article of agreement to be executed on the part of the city as aforesaid, with the persons lending said money to said city, to transfer the stock so to be issued to said city, to said lenders, to be held by them as collateral security only for the repayment of said loan and the interest to become due on the same. Provided, that the interest accruing on said stock, by way of dividends, shall be received by said city, and shall be set apart to the payment of the accruing interest on said loan; and any surplus arising from any dividends shall be invested under the direction of the City Council, as a sinking fund, to meet the payment of the principal of said debt when the same may become due.

SEC. 4. That on all questions arising before the stockholders of the Plank Road Company, on which the stockholders in said company are entitled to vote, the city stock shall be represented and vote by such person as the City Council may authorize to represent the city.

H. W. STARR, Mayor.

Passed February 25, 1850.

J. F. STEPHENS, Recorder.

An ordinance supplementary to the ordinance passed February 25th, A. D. 1850, to provide for procuring a loan of the sum of ten thousand dollars, and investing the same in the plank road stock.

SEC. 1. Be it ordained by the City Council of the city of Burlington, that the Mayor of said city be authorized to issue, to be attached to the bonds heretofore authorized to be given for $10,000, (by ordinance passed February 25th, A. D. 1850,) coupons for the interest to fall due from time to time on said loan of $10,000 to be invested in the stock of the Burlington and Mount Pleasant Plank Road Company, in such form as may be required by the terms of said loan.

SEC. 2. That said coupons for interest shall be executed and signed by the Mayor, in the name of the city of Burling-

ton, he taking a receipt for the same, as payment of the interest to accrue on said bonds.

SEC. 3. That it shall be the duty of the City Council of said city to provide means to meet the payment of said bonds and coupons when the same may become due, and at such place as the same may be due, according to the contract entered into for said loan, and to pay the same.

HENRY W. STARR, Mayor.

Passed March 11th, A. D. 1850.

JAMES F. STEPHENS, Recorder.

The declaration is for the principal and interest on the bonds. An amendment claims also on the common counts.

The defendant answered, setting out copies of the charter and ordinances under which the bonds were issued (which we have already inserted, as endorsed upon the bond).

The defendant, in his answer, sets up, that the town was a municipal corporation, created by a special act of the Legislature--admits the issue of the bonds—alleges that they were for the purpose of procuring money to invest in a plank road company from Burlington to Mount Pleasant, which was a private corporation to build a plank road from Burlington, in Des Moines county, to Mount Pleasant, in Henry county, a distance of twenty miles.

That E. W. Clark, Bros. & Co. knew this. That the said officers of the city issued said bonds without authority.

Annexed to the answer are copies of the charter and amendment and ordinances, which need not be repeated here.

The plaintiffs demurred to this answer,

1st. Because the petition alleges the plaintiffs were holders before maturity, and the answer avers no notice to them as to the purpose of the bonds.

2d. Because the answer alleges that the plank road company is a private corporation, which averment contradicts the laws of Iowa, of which the Court takes judicial notice.

3d. Because the construction of a plank road from Burlington to Mount Pleasant was a public purpose, beneficial to said town, and the corporation, under the charter, had full

and complete power to submit the question of borrowing money for that purpose, to the legal voters of the town, and upon the adoption of such question by the requisite majority, the officers had the right to issue the bonds, and the holder was not bound to look to the appropriation of the money.

In the absence of averments to the contrary, the Court will infer that the forms of the law were complied with.

4th. Because, by the charter, authority was granted to the corporation to borrow money for a public purpose.

A plank road, either to or through the city of Burlington, is a public purpose.

The holder of such a bond is not bound to inquire whether the road is within or without the city limits.

The city is estopped, by the recital of its bonds, from alleging its own fraud and evade the payment of its debts.

5th. Because the city had a right to borrow money, on a proper vote, for any public purpose. A plank road is a public purpose. No averment of notice of an unlawful purpose is made, and the answer is no bar to the action.

6th. Because the acts referred to in the answer provide that the City Council of Burlington, and its inhabitants, were the judges of the propriety of borrowing money for any public purpose. There is no allegation in the answer that the forms of the statute are not complied with, and in the absence of notice of such non-compliance, the defendant and its citizens are estopped from setting up that a plank road, which they are presumed to have determined was a public purpose, when voted for, is not a public purpose now, when they have borrowed the money and acquiesced in its lawful use for ten years.

The Court overruled this demurrer. The plaintiff abides by it, and brings his writ of error to this Court.

Argument.

This and the case of Learned vs. The City of Burlington present the single question, and that was the question decided by the Court below, whether the Legislature of Iowa could, under the Constitution, authorize the town council of

Burlington, by a vote of the people, to borrow money to aid in building plank roads leading to and from the town, and inducing the country people to trade therewith.

The grant of legislative power was ample. The corporation had authority to borrow money for any public purpose, upon submitting the question to a vote of the people, and a majority voting in favor of it. There is no contest about the power, or that forms of exercising the power were complied with.

The sole question is one of constitutional power on the part of the Legislature.

As to plank roads, there has been no decision either in this or the Supreme Court of Iowa. The decisions of this Court in the cases here cited, conclusively establish that the Legislature had such constitutional power in relation to corporations—like towns and counties—to authorize them to borrow money to build railroads.

Gelpcke vs. City of Dubuque, 1 Wallace.

Meyer & Meister vs. City of Muscatine, 1 Wallace.

These cases were decided, upon an act of the Legislature, in words applying to Dubuque and Muscatine, precisely like this, "to borrow money upon a vote of the people for any public purpose."

Now, we need not argue to this Court, that if the building of a railroad to or through a town or county is a public purpose, the building of a plank road is, for the like reason, a public purpose. No human ingenuity can draw any distinction between them.

The Court below entirely overlooked the following language of this Court in Gelpcke vs. Dubuque:

"The qualifications, coupled with the grant of power in the 27th section of the act of incorporation, are not now in question. If they were, the result would be the same."

The real question has already been fully decided by this Court—unless some skill shall make a plank road less a public purpose than a railroad—and we believe this Court will not hesitate to reverse the judgment below in both cases.

JAMES GRANT,
Atty. for Pltff. in Error.

Supreme Court of the United States.

DECEMBER TERM, 1866.

MITCHELL & GLOVER
vs.
THE CITY OF BURLINGTON. } No. 81.

EDWARD LARNED
vs.
THE CITY OF BURLINGTON. } No. 82.

These cases raise the question of the validity of certain bonds executed by the Mayor and Recorder of the City of Burlington, under a provision in the city charter which allows the city authorities, when the council shall deem it expedient, to borrow money "*for any public purpose.*" The pre-requisite steps seem to have been all taken, so that there is no formal objection to the exercise of the authority. The object of the loan appears upon the bonds themselves, so that the purchasers were not deceived. They might judge for themselves of their validity; there is therefore no *estoppel.* The obligees are a public body, whose officers *did* or *did not* legally bind them. There were none whose duty it was to contest the legality of these bonds *ab initio*; therefore no right to object to them is lost by *laches.* There remains therefore only the question of power on the part of the Mayor and Recorder to borrow money *to invest in the stock of the Burlington and Mount Pleasant Plank Road Company*, that is to say, whether such investment is a *public purpose* within the meaning of the city charter.

The object of the incorporation is, of course, to be considered in the construction of the charter, especially in all

its general provisions. A *special* power might be given to a corporation to invest in business, no matter how remote from its appropriate functions. But grants of powers, *general* in their terms, have been confined, and it is believed ought to be confined, within those appropriate functions. It cannot have been intended, in the recent case of Rogers vs. Burlington, to hold that such powers are unlimited. In that case, a railroad, entirely without the city, was held to be a public object within the purview of the charter: and a loan of money to invest in the stock of such company, a public purpose within the meaning of the charter. This seems to rest upon the ground that railroads, like our navigable rivers, are lines of communication belonging to the public at large as commercial facilities, and therefore their construction a public purpose to the city as a member of the commercial world.

These cases can rest on no such broad ground. This money was borrowed to invest in stock in a private company, whose place of operation was without the limits of the city. If a private person made such investment, his stock was private property, and he was simply a stockholder in a private company. The same with the city. It can be but simply a stockholder, and subject to all the liabilities, whatever they be, of stockholders in such corporation.

If this be a *public purpose*, such as the city corporation may engage in, and in which the officers may embark the capital and credit of property-holders, there would seem to be no limit to their powers. They may engage at pleasure, and bind property of the city in any wild enterprise, which their personal caprice or personal interest may dictate. The two-thirds vote is no restraint. In most cities four-fifths numerically pay no taxes, and are ready to vote for any thing which will give employment and insure pay. This unrestrained power were most impolitic as well as unjust—it were placing the property

of a city in the power of those who do not own it, but who want to use it for their own purposes. An active business man, who is especially a good electioneerer, has a plank road on hand near a city of moderate size—he has expended all the means of himself and associates, and still lacks funds to finish his work, and pay his hands; but with the aid of these hands, and other ordinary appliances, he can elect a city council, get a vote for a loan to enable the city to take stock in his enterprise, and all is set right at the expense of the property-holders.

Men do not generally suppose that they hold property in our cities entirely subject to the caprice of the multitude. They had supposed, and those of us who gave them counsel, supposed also, that the city charters, limited and restrained by the well settled principles of construction, afford them reasonable protection against the application of their property without their consent to wild and wasteful projects. This protective principle is believed to have been shaken in a recent case or two in this court, which we must accept as the law, but they are exceptional cases, and do not make the authority of the city council in all cases absolute over city property. There is still a question, limited though it be, as to what is a "public purpose" in the meaning of the charter? In this case, is it a subscription of stock in a petty *private joint stock* company—a plank road to help build up somebody's little town ten or twelve miles from the city, that is, to be taxed to construct it? a coal shaft, a steamboat, a flouring mill, or whatever other private enterprise is likely to fail by mismanagement or for want of capital? Cases such as these have not been, and ought not to be sustained.

But it is said that the capitalist who honestly invested his money in these bonds will suffer if they be not sustained. Be it so—such is the fate of the farmer who buys a defective title, the dealer who buys a stolen horse, or the man who, no matter for what, trusts the public or private agent who exceeds his authority. Capitalists, as

a class, have no right to the special guardianship of courts of justice. They are not *inopes consilii*, but are proverbially cautious and prescient—look well to the future, and learn to profit by changes which ruin less opulent and less sagacious men—they select their time to operate, buy when money is scarce, and prices low, and bide their time to sell when money is plenty, and prices high. Generally, they profit by every national vicissitude, and least of all, need the sedulous care of legislatures and courts. They are entitled to protection of the law as it is, and so is the man—be he merchant, mechanic, or capitalist—who applies his means to the purchase of lots, and the erection of buildings in a city. Both should be alike protected by the settled law of the land. We claim that this settled law, as heretofore understood and pronounced, does not sustain these bonds.

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